



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Enforcement functions of OFT

92 Duty of OFT to monitor undertakings and orders

- (1) The OFT shall keep under review—
 - (a) the carrying out of any enforcement undertaking or any enforcement order; and
 - (b) compliance with the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (2) The OFT shall, in particular, from time to time consider—
 - (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
 - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—
 - (i) one or more of the parties to it can be released from it; or
 - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
 - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to—

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- (a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;
 - (b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;
 - (c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;
 - (d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) the Secretary of State instead of an enforcement undertaking;
 - (e) the enforcement by virtue of section 94(6) to (8) of any enforcement undertaking or enforcement order; or
 - (f) the enforcement by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (4) The OFT shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an enforcement undertaking accepted by it;
 - (b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
 - (c) any possible variation or revocation by it of an enforcement order made by it;
 - (d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;
 - (e) the enforcement by it by virtue of section 94(6) of any enforcement undertaking or enforcement order; or
 - (f) the enforcement by it by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (5) The OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The OFT shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The OFT shall—
- (a) give any report prepared by it under subsection (6) to the Commission;
 - (b) give a copy of the report to the Secretary of State; and
 - (c) publish the report.

93 Further role of OFT in relation to undertakings and orders

- (1) Subsections (2) and (3) apply where—
- (a) the Commission is considering whether to accept undertakings under section 80 or 82; or

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- (b) the Secretary of State is considering whether to accept undertakings under paragraph 1, 3 or 9 of Schedule 7.
- (2) The Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.
- (3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT’s consultations within such period as the relevant authority may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.
- (5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.
- (6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the OFT shall give such advice as it considers appropriate.